United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: January 25, 2005

TO : Richard L. Ahearn, Regional Director

Region 19

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Carpenters Local 1144

(Cristalla, LLC)

560-2512

Pacific Northwest Regional Council 560-2550-8396 Of Carpenters 560-2575-6784

(Cristalla, LLC) 560-7540-4080-6200

Cases 19-CC-2001, 19-CC-2002

The Region submitted this case for Advice as to whether two subdivisions of the same international union violated Section 8(b)(4)(i) and (ii)(B) of the Act by stationing multiple agents and cars with signs in their windows near a neutral gate. We conclude that the Unions' conduct constituted signal picketing that violated Section 8(b)(4)(i) and (ii)(B). In addition, we conclude that the Unions' delivery of a picket/strike sanction notice to the general contractor was an unqualified threat to picket a neutral employer that violated Section 8(b)(4)(ii)(B).

FACTS

Cristalla, LLC is the owner, developer, and general contractor of a high-rise condominium at the corner of Lenora and Second Avenues in Seattle, Washington. Lenora Avenue is the northern boundary to the construction site and Second Avenue is the eastern boundary. A hotel is the southern boundary and an alley is the western boundary. A building that houses Cristalla's offices and a sample condominium unit is to the west of the alley and separates the alley from First Avenue to the west.

Cristalla does not employ any construction employees at the site. Rather, it utilizes subcontractors, most of which are unionized, to perform the work. Around March 2004, ¹ Cristalla awarded Metcon, LLC the subcontract for the

 $^{^{1}}$ All subsequent dates are in 2004 unless otherwise indicated.

drywall and metal stud framing work at the site.² Tom Cantrell is the sole owner and president of Metcon, which is a non-union contractor. Metcon employed about 78 workers on the Cristalla site.

After Cristalla subcontracted with Metcon, several representatives from the Pacific Northwest Regional Council of Carpenters (the Council) and Carpenters Local 1144 (Local 1144) met with Cantrell to get him to sign a collective bargaining agreement. During the summer, Cantrell met with Council representatives Rob Van Alstyne and Joe Baca and Local 1144 Organizer Jimmy Mata. At a meeting in July, Mata told Cantrell of a construction job that Local 1144 had shut down near the condominium site and stated that if Cantrell did not sign a contract, Local 1144 would picket Metcon. In early August, Cantrell informed the different Union officials that he would not sign a contract.

In late September, Mata left a phone message for Cantrell stating that Cantrell must return the call or Mata would "take action." Cantrell did not return the call.

On October 13, Mata went to the condominium project and handed Mark Glass, Cristalla's site superintendent, a picket/strike sanction notice. The notice was printed on stationery of the Seattle/King County Building and Construction Trades Council and appeared to be signed by Larry Fritts, that organization's president. The notice listed Local 1144 as requesting the notice, Cristalla as the general contractor, Metier/Metcon as the non-union subcontractor, and Glass as the superintendent.

After receiving the notice, Cristalla established a reserved gate system at the condominium site and sent letters to the Unions informing them of the system. The primary gate was located in the alley on the west side of the site and was designated for Metcon, other non-union subcontractors, Cristalla, and visitors and suppliers to the site. The neutral gate was located towards the center of the Second Avenue property line on the east side of the site.

² Metier Construction, Inc., another commercial drywall and metal stud contractor, created Metcon in November 2003 because of insurance problems that would have kept it from performing certain work.

 $^{^{3}}$ The Council and Local 1144 will be referred to collectively as "the Unions."

Cristalla forwarded the picket/strike sanction notice to Cantrell. Cantrell called Mata and asked why he had delivered the notice to Cristalla. Mata replied only that he wanted to reach an agreement with Metcon and that he wanted Cantrell to have further discussions with representatives from the Unions. Through October and early November, Cantrell met with Council and Local 1144 representatives. During this time, foremen at the condominium project who supervised the unionized employees of other subcontractors told Glass that their employees had informed them that picketing would occur at the site and that they would honor the picket line. Cantrell and the Union officials did not reach an agreement.

On November 9, about 20 of the Unions' representatives appeared at the condominium project between 6 a.m. and 7:45 a.m., which is when employees would be reporting for work. About five stood near the neutral gate, two others stood near the primary gate, eight stood at the corner of Lenora and Second Avenues, and four or five stood on the far side of Second Avenue across from the site. The Union representatives wore hardhats with Union insignia and distributed handbills near both gates. They did not carry picket signs or block ingress to or egress from the site. Those who distributed handbills near the neutral gate told the unionized employees that they were not there to picket or to shut down the job. After a foreman for Cristalla asked Mata, who was standing near the neutral gate, what he was doing, Mata replied that he was going to make the job "famous."

During the time the Union representatives were at the site, four vehicles with signs in their windows were parked on the far side of Second Avenue, across from the neutral gate. Two other vehicles with signs were parked on the far side of Lenora Avenue across from the site. The signs were located in the back and side windows that faced the site and stated, "METIER IS NOT FAIR." No employees at the condominium site have walked off the job or have ceased performing work.

1000 First Avenue Properties, LLC (1000 First) is an owner/partner of Cristalla and is developing and building a mixed-use condominium and boutique hotel at another location in downtown Seattle. On November 9, after leaving the condominium project, two of the vehicles with signs in them parked on First Avenue across from 1000 First's offices. The Union representatives in those vehicles then set off the vehicles' alarms and stayed parked for about 10 to 15 minutes before driving away. Metier had previously performed work for 1000 First at its offices, but no Metier

employees were at the offices on November 9. Metier was not scheduled to perform any additional work either at that location or at 1000 First's construction project located a few hundred feet south of its offices on First Avenue.

ACTION

We conclude that the Region should issue a complaint, absent settlement, alleging that the Unions' conduct at the Cristalla construction site constituted signal picketing that violated Section 8(b)(4)(i) and $(ii)(B).^4$ In addition, the Region should allege that the Unions' delivery of the picket/strike sanction notice to Cristalla was an unqualified threat to picket a neutral employer that also violated Section 8(b)(4)(ii)(B).

A. The Unions' Conduct Was Unlawful Signal Picketing that Violated Section 8(b)(4)(i) and (ii)(B).

Union activity that does not constitute actual picketing but which, nevertheless, seeks to induce employees to engage in a work stoppage violates Section 8(b)(4)(i)(B).⁵ Thus, the Board has found that signal picketing, which is "activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union," violates Section 8(b)(4)(i)(B).⁶ The Board typically finds unlawful signal picketing in cases where the union's conduct is directed at neutral employees who, because of the timing or the type of conduct, would recognize it as a signal to stop work.⁷

⁴ The Region should not allege that the Unions' conduct at 1000 First violated the Act. There is no evidence that the Unions induced neutral employees to stop working and, absent picketing, signs naming only the primary employer did not constitute (ii) conduct.

⁵ See Service Employees Local 87 (Trinity Bldg. Maintenance Co.), 312 NLRB 715, 743 (1993), enfd. mem. 103 F.3d 139 (9th Cir. 1996).

Operating Engineers Local 12 (Hensel Phelps Constr. Co.), 284 NLRB 246, 248 n.3 (1987) (citation omitted).

⁷ See, e.g., <u>Electrical Workers IBEW Local 98 (Telephone Man, Inc.)</u>, 327 NLRB 593, 593 & n.3, 600 (1999) (finding signal picketing where non-traditional conduct followed traditional picketing at common situs construction project); Iron Workers Pacific Northwest Council (Hoffman

Moreover, a union violates Section 8(b)(4)(i)(B) when one of its agents directs statements to neutral employees that would "reasonably be understood . . . as a signal or request to engage in a work stoppage against their own employer." For example, when a union agent tells neutral employees that the primary employer is "unfair," that constitutes unlawful inducement and encouragement of a work stoppage among the neutral employees because it "invoke[s] their obligation under usual union rules not to handle 'unfair' or 'nonunion' material."

At the same time, not all forms of inducement or encouragement that violate Section 8(b)(4)(i)(B) constitute restraint or coercion of a neutral person that violate Section $8(b)(4)(ii)(B).^{10}$ For example, oral statements of inducement or encouragement violate 8(b)(4)(ii)(B) only if they successfully result in a work stoppage. However, the

Constr. Co.), 292 NLRB 562, 562 n.2, 571-576 (1989) (same), enfd. 913 F.2d 1470 (9th Cir. 1990); Hensel Phelps Constr. Co., 284 NLRB at 248 ("The [union] has offered no explanation for the assemblage of its four business agents . . . at the [neutral] gate . . . during the early morning hours when employees would customarily be reporting for work."). See also Mine Workers Dist. 2 (Jeddo Coal Co.), 334 NLRB 677, 681, 687 (2001) (signal picketing occurred where 8 or 10 union agents stood across from entrances and placed one or more signs on cars and other objects).

- 8 Los Angeles Bldg. & Constr. Trades Council (Sierra South Dev., Inc)., 215 NLRB 288, 290 (1974).
- 9 Id. (citing District Council of Painters No. 48 (Hamilton Materials, Inc., 144 NLRB 1523, 1524 (1963), enfd. 340 F.2d 107 (9th Cir.), cert. denied 381 U.S. 914 (1965).)
- 10 See Teamsters Local 107 (Riss Co.), 130 NLRB 943, 946-947 (1961) (preventing neutral employee from carrying out his assigned task made it impossible for neutral employer to carry on its business with primary, and therefore was directly coercive of neutral employer), enfd. 300 F.2d 317 (3d Cir. 1962).
- 11 Compare <u>Sierra South Dev., Inc.</u>, 215 NLRB at 290 (statements by union agent to neutral employees that picketing was authorized violated 8(b)(4)(ii)(B) where work stoppage resulted), with <u>Teamsters Local 126</u> (Ready Mixed

Board and the courts uniformly have held that picketing at a common situs violates Section 8(b)(4)(i) and (ii)(B), regardless of whether it is successful, because picketing is inherently coercive. Similarly, signal picketing under similar circumstances has also been found to violate both subsections of the Act.¹³

Here, we agree with the Region that the Union's conduct constituted signal picketing that violated Section 8(b)(4)(i) and (ii)(B). The Unions ignored the reserved gate system in place at the site, of which the Unions were aware, and stationed five agents with handbills at the neutral gate where unionized employees entered and an additional eight nearby at the corner of Lenora and Second Avenues. Although these agents did not engage in this activity after prior traditional picketing at the site or during contemporaneous picketing at the site, they arrived after unionized neutral employees already were aware that picketing at the site was imminent and had passed that

Concrete, Inc.), 200 NLRB 253, 277 (1972) (oral inducements directed at neutral employees that did not result in work stoppage did not violate 8(b)(4)(ii)(B)). See generally Laborers Local 332 (C.D.G., Inc.), 305 NLRB 298, 305 (1991) (in demonstrating a violation under Section 8(b)(4)(i)(B), "the test of inducement or encouragement does not turn on success or failure").

- Ready Mixed Concrete, Inc., 200 NLRB at 254 & n.6; See generally Electrical Workers IBEW Local 323 (Renel Constr., Inc.), 264 NLRB 623, 625 (1983); Electrical Workers IBEW Local 3 (Mansfield Contracting Corp.), 205 NLRB 559, 564 n.20 (1973).
- 13 See, e.g., <u>Telephone Man, Inc.</u>, 327 NLRB at 593 & n.3, 600; <u>Hoffman Constr. Co.</u>, 292 NLRB at 562 n.2, 571-576; <u>Hensel Phelps Constr. Co.</u>, 284 NLRB at 249; <u>Plumbers Local</u> 274 (Stokely-Van Camp, Inc.), 267 NLRB 1111, 1114, 1115 (1983).
- ¹⁴ By stationing their agents near the neutral gate, the Unions violated the third criterion in <u>Sailors' Union of</u> the Pacific (Moore Dry Dock), 92 NLRB 547, 549 (1950), and showed that they possessed an unlawful secondary object. See, e.g., Telephone Man, Inc., 327 NLRB at 593, 600.

information on to their supervisors. 15 Based on this prior knowledge, the neutral employees would have recognized that the Unions, although not engaged in traditional picketing with placards, were requesting that they take sympathetic action and not cross the line. Moreover, the facts show that the Unions targeted the unionized neutral employees with their signal since their agents were present from about 6 a.m. to 8 a.m., hours when the neutral employees would be reporting to work.

Furthermore, our conclusion that the Unions' were involved in signal picketing is supported by the text of the signs the Unions displayed in the vehicles by the neutral gate and at other points at the site away from the primary gate. Those signs stated, "METIER IS NOT FAIR." Similar to Hamilton Materials, Inc., the use of the "not fair" term invokes the usual obligation of the unionized employees entering the neutral gate to cease work or to take other action that would assist the Unions' in their dispute with the "not fair" primary employer. As the Region notes, because of that language, and the neutral employees' prior knowledge at the site, there is no merit to the Unions' defense that the use of "Metier" rather than "Metcon" on the signs rendered its conduct lawful. 16

Finally, the Unions' conduct was unlawful notwithstanding its limited duration. In Teamsters Local
554 (Prairie Ford Truck Sales), the secondary picketing lasted only for 20 to 30 minutes on two different days. 17
The ALJ, affirmed by the Board, stated, "since the [union] takes a position that it had a right to picket [the neutral] . . . the fact that the picketing was minimal does not obviate the propriety of issuing a remedial order.
Absent . . an order remedying the [union's] unfair labor

¹⁵ The Unions' activity also occurred after Local 1144 Organizer Mata had delivered a picket/strike sanction notice to neutral employer Cristalla.

¹⁶ We also agree with the Region, based on the analysis set forth in its Request for Advice, that there is no merit to the Unions' assertion that it is exculpated by the statements its handbillers made at the neutral gate. Regarding those statements, there is no evidence that "each and every neutral employee" was exposed to their exculpatory statements. See <u>Teamsters Local 85 (Graybar Electric Co.)</u>, 243 NLRB 665, 666 (1979).

¹⁷ 253 NLRB 1, 3 (1980).

practice, it is reasonable to conclude that such picketing in the future would occur." Thus, in light of the Unions' position here that it was engaged in lawful activity, it is appropriate to seek a remedial order to preclude future signal picketing.

B. The Unions Threatened Neutral Employer Cristalla in Violation of Section 8(b)(4)(ii)(B) By Delivering the Picket/Strike Sanction Notice to Cristalla.

"[W]here a union makes an unqualified threat to a neutral [employer] to picket a jobsite where an offending primary employer would be working, and has reason to believe that persons other than the primary will be at work on the site, it has an affirmative obligation to qualify its threat by clearly indicating that the picketing would conform to Moore Dry Dock standards or otherwise be in uniformity with Board law." In Teamsters Local 886 (Stephens Co.), the union sent two letters to several neutral retail outlets that did business with the primary employer. The first letter stated that the union would publicize its primary labor dispute by use of pickets at the neutral retail outlets. The second letter stated that any picketing against the primary that occurred near the neutrals' premises would strictly conform to Moore Dry Dock

¹⁸ Id. See also Telephone Man, Inc., 327 NLRB at 601 (picketing at neutral gate for about two hours after being informed of reserved gate system was not de minimis and required remedial order); Mansfield Contracting Corp., 205 NLRB at 565 ("discontinuance of illegal activity does not erase the violation of law involved . . . nor is it . . . any assurance that it may not be resumed"); Shore v. Pittsburgh Bldg. & Constr. Trades Council, 173 F.2d 678, 682 (3d Cir. 1949) (Section 10(1) order appropriate even though unlawful conduct already had occurred, "if there is reasonable grounds for believing that it will be done again").

¹⁹ Teamsters Local 456 (Peckham Materials Corp.), 307 NLRB 612, 619 (1992). See also Electrical Workers IBEW Local 98 (MCF Services, Inc.), 342 NLRB No. 74, slip op. at 13 (July 30, 2004).

²⁰ 133 NLRB 1393, 1395 (1961).

 $^{^{21}}$ Id. at 1398.

standards. 22 The Board held that the first letter violated Section 8(b)(4)(ii)(B) because, unlike the second letter, it threatened picketing without any assurance of conformity with Board law. 23

We conclude that the picket/strike sanction notice that Local 1144 Organizer Mata delivered to Cristalla Superintendent Glass on October 13 was an unqualified threat to picket a neutral that violated Section 8(b)(4)(ii)(B). The Unions' notice failed to explicitly state that picketing would be directed only at primary employer Metcon or would be in conformity with Board law. Rather, the Union appeared to be unlawfully targeting the entire construction site, especially where the notice included neutral Cristalla's name and was delivered to Cristalla rather than Metcon.

In sum, we conclude that the Region should issue complaint, absent settlement, alleging that the Unions violated Section 8(b)(4)(i) and (ii)(B) by signal picketing at the Cristalla construction site on November 9. Furthermore, the Region should allege that the Unions' delivery of the picket/strike sanction notice to Cristalla was an unqualified threat to picket that violated Section 8(b)(4)(ii)(B).

B.J.K.

²² <u>Id.</u> at 1399.

Id. at 1395-96. See generally Service Employees Local 87 (Trinity Bldg. Maintenance Co.), 312 NLRB at 739 & n.5, 752 (union that had primary dispute with janitorial service working at neutral property made unlawful threat to picket by sending strike sanction notices to neutral along with cover letter stating that notices meant renovation work being performed on property by other neutral construction subcontractors would not be completed on time).